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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,496	09/19/2003	Makoto Akune	7217/70907	8021
530 7590 03/05/2008 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090				
EXAMINER				
DAILEY, THOMAS J				
ART UNIT		PAPER NUMBER		
2152				
MAIL DATE		DELIVERY MODE		
03/05/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/666,496

**Applicant(s)**

AKUNE, MAKOTO

**Examiner**

THOMAS J. DAILEY

**Art Unit**

2152

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 28-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

#### **DETAILED ACTION**

1. Claims 28-34 were added by the amendment filed on 11/19/2007.
2. Claims 1-27 were cancelled by the amendment filed on 11/19/2007.
3. Claims 28-34 are pending.

#### ***Information Disclosure Statement***

4. The information disclosure statement filed January 16, 2008 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. Various Japanese Patent documents were cited on the incoming form, but no copies of the those documents were received.

#### ***Response to Arguments***

5. Applicant's arguments with respect to claims 28-34 have been considered but are moot in view of the new ground(s) of rejection.
6. Applicant is advised that should claims 29 and 30 be found allowable, claim 32-33 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in

wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the fourth paragraph of 35 U.S.C. 112:

Subject to the following paragraph, a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.

8. Claims 32-33 are rejected under 35 USC § 112 fourth paragraph as they are improper dependent claims.
9. Claims 32 and 33 are identical duplicates of claims 29 and 30, respectively, and are therefore improper dependent claims as they do not further limit the parent claim, claim 28.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 28-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kidder (US Pat. 6,363,413) in view of applicant's admitted prior art, hereafter referred to as AAPA (citations under this label are taken from the applicant's submitted specification).

12. As to claim 28, Kidder discloses a content server for distributing upgraded content data, comprising:

a network interface for receiving an upgrade request from a user for content data previously downloaded by the user from the content server as base data of a first format (column 7, lines 36-43, the second user request for the video indicates the bit streams already in possession of the user (A1 and V1) whereupon the server sends the upgrading data (audio stream A2 and video stream V2) that is combined with the previously transmitted data in column 7, lines 50-57 in order to create a higher quality video clip);

a storage unit having a user-related information section for checking user-related information of the base data previously downloaded by the user (column 7, lines 36-43, information regarding the video data previously sent to the user is processed by the server);

an upgrading-data generating unit for generating upgrading data of the content data to upgrade the previously downloaded base data of the first format to the target format (column 7, lines 36-43, server generates video data V2 and audio data A2); and

the network interface transmitting the upgrading data to the user in response to the upgrade request (column 7, lines 36-43).

But, Kidder does not explicitly disclose the upgrade request specifying a target format. Rather, Kidder's request is a generic request to improve the quality of the video, with no specific target format in mind.

However, the AAPA discloses a user upgrade request specifying a target format of higher quality than a previously downloaded first format (page 3, lines 2-17).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Kidder and the APPA in order to allow user control of the quality of the content data they receive from a content server.

13. As to claim 31, Kidder discloses a personal terminal for the playback of content data, comprising:

a network interface for sending an upgrade request to a content server for content data previously downloaded by a user as base data of a first format and receiving upgrading data of the content data in response (column 7, lines 36-43, the second user request for the video indicates the bit streams already in

possession of the user (A1 and V1) whereupon the server sends the upgrading data (audio stream A2 and video stream V2) that is combined with the previously transmitted data in column 7, lines 50-57 in order to create a higher quality video clip);

a content-data combining unit for combining the upgrading data with the previously downloaded base data, whereby the base data is upgraded to the target format (column 7, lines 50-57, the first data stream is read from the cache and combined with the recently received second data stream with the end result being a video clip of higher quality); and

an audio-signal processing unit for playback of the upgraded base data having the target format (column 7, lines 50-57, upgraded video clip with audio data can be played back for the user).

14. As to claim 34, it is rejected by the same rationale set forth in claim 28's rejection.

15. As to claims 29 and 32, Kidder discloses the base data includes a header comprising content-grade identification information indicating the first format (column 7, lines 36-39).

16. As to claims 30 and 33, Kidder discloses the higher quality is at least one of a higher sampling frequency and a higher bit rate of the content data (column 7, lines 50-64).

### ***Conclusion***

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
18. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.
19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Dailey whose telephone number is 571-270-1246. The examiner can normally be reached on Monday thru Friday; 9:00am - 5:00pm.



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20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571-272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. J. D./  
Examiner, Art Unit 2152

/Bunjob Jaroenchonwanit/  
Supervisory Patent Examiner, Art Unit 2152